

REGULAR CITY COUNCIL MEETING  
MAY 9, 1988

PRESENT

Ruth Hansen  
Wesley J. Bloomfield  
Gayle Bunker  
David Church  
Don Dafoe  
Rex T. Harris

Mayor  
Council Member  
Council Member  
Council Member  
Council Member  
Council Member

ABSENT

None

OTHERS PRESENT

Dorothy Jeffery  
Richard Waddingham  
Neil Forster  
Sarah Inez Moody  
Steve Lester  
Jan Johnson  
Stanley K. Robison  
Darrell Lester  
Keith Vincent  
Bryan Christensen  
Justin Carroll  
Jason Lester  
Jay Larson  
Thomas J. Hamilton  
Thomas E. Chandler  
Hugh J. Loukinas  
Cheony Loukinas  
Diane Stewart  
Sheri Beeson  
Debra Sabey  
Russ C. Johnson  
Paul J. Mitchell  
Clyde Bunker  
Don M. Ashcraft  
Lynda Ashcraft  
Michael Halloran  
H. Doyle Bender  
Catrina Robison

City Recorder  
City Attorney  
Public Works Director  
Chronicle/Progress  
City Resident  
City Resident  
Justice of Peace  
City Resident  
Boy Scout  
Boy Scout  
Boy Scout  
Boy Scout  
Boy Scout  
City Resident  
City Resident  
City Resident  
City Resident  
City Resident  
City Resident  
City Resident  
City Resident  
Police Officer  
Melville Irrigation Co.  
City Resident  
City Resident  
KNAK  
City Treasurer  
City Robison

Mayor Hansen called the meeting to order at 7:00 p.m. Dorothy Jeffery, City Recorder, acted as secretary. Mayor Hansen stated

that notice of the meeting time, place and agenda was posted at the principal office of the governing body located at 76 North 200 West and was provided to the Millard County Chronicle/Progress, the local radio station, KNAK, and to each member of the City Council by personal delivery two days prior to the meeting.

#### MINUTES

The proposed minutes of a regular City Council meeting held May 2, 1988, were presented for consideration and approval. The Council reviewed the minutes briefly, after which Council Member Gayle Bunker MOVED that the minutes be approved as presented. The motion was SECONDED by Council Member David Church. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously.

#### ACCOUNTS PAYABLE

The Council reviewed the accounts payable, a list of which had been given to them two days prior to the meeting. Following a brief discussion of the accounts payable, Council Member David Church MOVED that the accounts payable be approved for payment as listed in the amount of \$3,948.02. The motion was SECONDED by Council Member Wesley Bloomfield. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously.

#### STEVE LESTER: REQUEST TO USE FAA BUILDING AT AIRPORT FOR FLIGHT INSTRUCTION AND CLASSROOM PREPARATION AREA

Mayor Hansen asked Steve Lester to present a request to the Council.

Steve Lester requested Council's approval to use a building located at the Delta City Airport, which is being transferred to Delta City from the FAA, for flight instruction and classroom preparation. He also requested that if a fee is to be charged for use of the building, it be kept very minimal.

Council Members spoke in favor of the request as long as the City would be excluded from expenses incurred through the use of the building.

Public Works Director Neil Forster said that Delta City has not yet received title to the FAA buildings and recommended that this request be reconsidered after the transfer has been completed.

There was no Council action taken.

JAN JOHNSON/LYNDAS ASHCRAFT: REQUEST FOR FINAL DECISION ON  
PROPOSAL FOR CITY RESIDENTS TO FENCE CANAL

Mayor Hansen recognized Jan Johnson and Lynda Ashcraft and asked them to address the Council.

Lynda Ashcraft addressed the Council and requested a final decision from the Council as to a request made at a regular City Council meeting held March 14, 1988, to erect a temporary mesh wire deterrent fence along the Melville Canal in the vicinity of 600 East by May 27, 1988. Mrs. Ashcraft also said that she previously requested that the City Street Department grade the road along the canal prior to installation of the fence.

Attorney Waddingham informed the Council that any time a governmental entity undertakes responsibility to make an improvement for safety measures, even on private property, the City could become legally obligated to help maintain the safety improvement.

Attorney Waddingham pointed out that even though there may appear to be a low risk liability involved in simply leveling a path with a grader for the purpose of making it easier to insert posts for a temporary mesh fence located near the canal, the fact that the City becomes involved at all, even in a limited manner when there is no legal obligation to do so, may make it easier to subject the City to future litigation should an accident occur due to problems that may arise with the maintenance of the fence. Attorney Waddingham stated that he has always been opposed to the City's intervention regarding private matters.

A second issue arose regarding whether the subdivider had a legal obligation to construct a fence adjacent to the canal. Attorney Waddingham stated that pursuant to Section 7.9 of the Delta City Subdivision Ordinance, the subdivider is required to install a six-foot (6') chainlink fence along the canal which is adjacent to the subdivision.

Attorney Waddingham also pointed out that the subdivider, Bob Pendray, had given the City trust deeds on the subdivision property to guarantee the construction of the required improvements. Upon final acceptance and approval of the final plat by the City Council, the subdivider has two years in which to complete the required improvements. If the subdivider does not complete the improvements within the two-year period, the City can then foreclose on the trust deeds and use the proceeds from the sale of the lots covered by the trust deeds to make such final improvements. The subdivider is then required to maintain the improvements for one year after their completion. Failure to do so may also result in a foreclosure of the trust deeds held by the City for the guarantee of such improvements.

Attorney Waddingham pointed out that the problem regarding the Pendray Subdivision is that the subdivision is divided into

numerous plats, each of which represents a single plat for purposes of final acceptance and approval of the final plat. The city is therefore faced with two major dilemmas. First, even assuming the City could require the subdivider to install the fence after final acceptance and approval of the final plat, the subdivider has two years in which to complete the work. This results in a tremendous delay to the residents of the Pendray Subdivision who feel it is imperative that a fence be constructed immediately in order to enjoy the full use of the property and to protect the many small children whose families live adjacent to the canal. Second, by giving the subdivision ordinance a strict reading, it would appear that to require the subdivider to construct a fence only in relation to each plat he records, the result may very well be the construction of only a portion of a fence due to the fact that there are still many unimproved lots in the Pendray Subdivision. Such result would not lessen the damage which the residents of the subdivision hope to avoid. It is also a possibility that the unimproved lots will remain unimproved. This completely defeats the intent of the fencing requirement.

Attorney Waddingham indicated that to construe the subdivision ordinance in this fashion is to work an injustice to the residents of the subdivision and make the fencing requirement of the subdivision ordinance annulity.

Attorney Waddingham stated that he had the opportunity to further explore a solution to this problem with Attorney Warren Peterson, who originally drafted the current subdivision ordinance. Attorney Waddingham and Attorney Peterson felt that Section 5.6 of the Subdivision Ordinance, entitled "Orderly Development Required", would require the subdivider to construct a complete fence, regardless of the subdivider's rights under the trust deed provision of the subdivision ordinance, inasmuch as Section 5.6 requires that the subdivider develop the subdivision in such a way that the required improvements would be continuous and all the improvements will be made available for the full, effective and practical use and enjoyment of the property. Accordingly, the only way to fully and effectively use and enjoy the property is to construct the entire fence to protect against the potential hazard of the canal which lies adjacent to the subdivision.

Attorney Waddingham then advised the Council that the foreclosure of the trust deeds on the subdivision could be an option, in order to receive sufficient funding for the construction of a fence. The Council felt that at this stage, the City should refrain from foreclosing on the trust deeds to see if a peaceful solution could be worked out with the subdivider. Attorney Waddingham indicated that he had an appointment scheduled with Mr. Pendray on Wednesday, May 11, 1988.

After discussion, the Council informed Mrs. Ashcraft that the City would smooth out a strip of ground adjacent to the canal for the homeowners living in the area to construct a temporary fence

until other arrangements could be made to construct the permanent fence required by the subdivision ordinance. Apparently, the temporary fence would be constructed on the Melville Irrigation Company right-of-way. Mr. Clyde Bunker, President of the Melville Irrigation Company, was in attendance at the meeting and gave his consent to allow the homeowners of the Pendray Subdivision to construct a temporary fence on the canal company right-of-way.

Following discussion, Council Member Don Dafoe MOVED to authorize the Public Works Department to smooth a construction pad prior to City residents erecting a mesh wire restraining fence along the Melville Canal. Also, Mrs. Ashcraft is to give Mr. Forster prior notification as to when the construction pad is to be graded. The motion was SECONDED by Council Member Gayle Bunker. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously.

Attorney Waddingham recommended to the City Council that the subdivision ordinance be amended to require a subdivider whose subdivision is adjacent to a canal to fully construct the required fence prior to the issuance of a building permit, so as to avoid further confusion of this issue. This would apply only to the fencing requirement.

The Council instructed Attorney Waddingham to prepare an amendment to the subdivision ordinance regarding fencing requirements.

MAYOR RUTH HANSEN: SELECTION OF FOURTH OF JULY CHAIRMAN

Mayor Hansen said that the Chamber of Commerce submitted to her a list of suggested names for a Chairman of the Fourth of July Celebration. Mayor Hansen asked the Council for their recommendations.

Council Members recommended that Darrell Lester be Chairman of the Fourth of July Celebration for 1988 and recommended Keith Griffiths as an alternate Chairman.

Mayor Hansen said she would inform the Chamber of Commerce of the Council's recommendations.

MAYOR RUTH HANSEN: REQUEST FOR DESERT RESEARCH INSTITUTE RADIATION MONITORING SITE

Mayor Hansen said that Desert Research Institute representatives met with her and requested that they be allowed to set up a Radiation Monitoring Site in the South West corner of the City Park for an indefinite period of time.

Council Members were not in favor of locating the radiation monitor on the South West corner of the City Park until further information is available. There was no Council action taken.

Mayor Hansen said that a Public Meeting has been scheduled for May 18, 1988, for the purpose of discussing Nuclear Testing and Off-Site Monitoring Sites. She asked Council Member Don Dafoe to conduct the meeting.

STANLEY K. ROBISON, JUSTICE OF PEACE: REVIEW OF NEW COURT PROCEDURES

Mayor Hansen asked Justice of Peace Stanley Robison to review with the Council new court procedures.

Delta City Justice of Peace Stanley Robison reviewed new court procedures regarding Driving Under the Influence violations. He also reported that the District Court, Circuit Court, Juvenile Court and the Justice Court will now be in the Fourth District effective April 25, 1988.

Mayor Hansen thanked Judge Robison for the information given and for the job he is doing as Justice of the Peace.

MAYOR RUTH HANSEN: ADOPTION OF TENTATIVE BUDGET FOR FY 1988-1989

Mayor Hansen presented a tentative budget for Fiscal Year 1988-1989. The Council reviewed the budget in detail, after which Council Member Gayle Bunker MOVED to approve the Delta City Tentative Budget for Fiscal Year 1988-1989 as presented. The motion was SECONDED by Council Member David Church. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously.

MAYOR RUTH HANSEN: SET PUBLIC HEARING DATE TO RECEIVE PUBLIC COMMENT ON DELTA CITY'S TENTATIVE BUDGET FOR FY 1988-1989

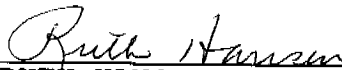
Mayor Hansen said that a Public Hearing needs to be held to receive public comment regarding Delta City's Annual Budget for FY 1988-1989.


Council Member Don Dafoe MOVED to schedule a public hearing for Monday, May 23, 1988, at 6:30 p.m. The motion was SECONDED by Council Member David Church. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously.

OTHER BUSINESS

Council Member Don Dafoe reported that the West Millard Recreation District will be responsible for preparation of the Neighborhood Park baseball field.

Mayor Hansen asked if there were any further comments, questions or items to be discussed. There being none, Council Member Wesley Bloomfield MOVED to adjourn. The motion was SECONDED by Council Member David Church. Mayor Hansen asked if there were any further comments or questions regarding the motion. There being none, she called for a vote. The motion passed unanimously. Mayor Hansen declared the meeting adjourned at 9:00 p.m.

  
RUTH HANSEN, Mayor

  
DOROTHY JEFFERY  
Delta City Recorder

MINUTES APPROVED: RCCM 5-23-88